

THE HONORABLE BENJAMIN SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CLYDE RAY SPENCER,

Plaintiff,

v.

DETECTIVE SHARON KRAUSE and  
SERGEANT MICHAEL DAVIDSON

Defendants.

NO. C11 5424 BHS

**DEFENDANTS' OBJECTION TO  
PLAINTIFF'S SUPPLEMENTAL  
DISCLOSURE OF TRIAL  
WITNESSES**

**NOTE FOR CONSIDERATION:  
Friday, December 27, 2013  
(Trial Date: January 7, 2014)**

Defendants Sharon Krause and Michael Davidson (hereafter "defendants") hereby object to Plaintiff's Supplemental Disclosure of Witnesses That Will Testify at Trial (Dkt. 222, hereafter "Plaintiff's Supplemental Disclosure") on the grounds that it is untimely and unauthorized under the Proposed Pretrial Order filed by the parties (Dkt. 210) and W.D. Local Rule 16.1, and it violates this Court's Order Granting in Part and Denying in Part Defendants' Motion to Strike Plaintiff's Supplemental Disclosures and Bar Testimony (Dkt. 127, hereafter "Order on Supplemental Disclosures").

As required by W.D. Local Rule 16.1, the Proposed Pretrial Order filed by the parties in this case concludes with the following provision:

**DEFENDANTS' OBJECTION TO PLAINTIFF'S  
SUPPLEMENTAL DISCLOSURE OF TRIAL  
WITNESSES - 1**

Cause No: C11-5424 BHS

LAW, LYMAN, DANIEL,  
KAMERRER & BOGDANOVICH, P.S.  
ATTORNEYS AT LAW  
2674 RW JOHNSON BLVD SW, TUMWATER, WA 98512  
PO BOX 11880, OLYMPIA, WA 98508-1880  
(360) 754-3480 FAX: (360) 357-3511

1 This order has been approved by the parties as evidenced by the signatures of their  
 2 counsel. This order shall control the subsequent course of the action unless  
 3 modified by a subsequent order. This order shall not be amended except by order  
 of the court pursuant to agreement of the parties or to prevent manifest injustice.

4 Dkt. 210, p. 34, lns. 1-4. Plaintiff did not identify either of the two witnesses now belatedly  
 5 disclosed, Paul Henderson and Robert Yoseph, as witnesses who will or might testify at  
 6 trial in the Proposed Pretrial Order. Dkt. 210, p. 7, ln. 21 - p. 11, ln. 21. Since plaintiff did  
 7 not seek or obtain an order from this Court authorizing this belated addition of trial  
 8 witnesses, defendants object to their disclosure.

9 The belated disclosure of these two trial witnesses also violates this Court's Order  
 10 on Supplemental Disclosures. The two new trial witnesses were among nine "belatedly  
 11 identified witnesses" on a list from which this Court authorized plaintiff to select two for  
 12 further use in the case, and the discovery deadline was extended three weeks to  
 13 accommodate the additional discovery necessitated by their late disclosure. Dkt. 127, lns.  
 14 7-14. Pursuant to this Order, plaintiff disclosed only one witness, Mr. Yoseph. Declaration  
 15 of Guy Bogdanovich in Support of Objection to Plaintiff's Supplemental Disclosure of Trial  
 16 Witnesses, ¶ 2 and Ex. A. Consequently, Mr. Henderson was never properly disclosed even  
 17 in discovery, and his use at trial is objected to on this additional ground.

18 Nor would Mr. Henderson be able to testify to any relevant, admissible facts based  
 19 upon personal knowledge. As shown in previous pleadings, Mr. Henderson's only  
 20 involvement in this matter was as a private investigator who worked for and reported to  
 21 Peter Camiel and Howard Goodfriend, two of plaintiff's former criminal defense attorneys  
 22 representing plaintiff on his appeals and/or habeas corpus proceedings dating back to the  
 23 1990s. Dkt. 108, p. 3, lns. 12-25; Dkt. 109, pp. 17-43. As such, any knowledge he claims  
 24 to possess would be based upon inadmissible hearsay from others.

As for Mr. Yoseph, the summary of his relevant knowledge provided when he was belatedly identified as a witness during discovery was strictly limited to knowledge of defendant Sharon Krause's investigative and interviewing techniques:

Attorney Yoseph is expected to testify regarding his knowledge of the investigative and interviewing techniques of Sharon Krause, including but not limited to Sharon Krause's investigative and interviewing techniques in the Nelson Melo case.

Dkt. 109, p. 47, lns. 10-12. Plaintiff's claim regarding investigative techniques utilized by defendant Krause has been dismissed, rendering Mr. Yoseph's described knowledge irrelevant and inadmissible. Plaintiff cannot now belatedly expand the scope of Mr. Yoseph's alleged knowledge by adding reference to Sharon Krause's "investigative techniques and reputation for honesty and integrity" as stated in Plaintiff's Supplemental Disclosure. Since Mr. Yoseph was never properly disclosed as a witness with alleged knowledge of Sharon Krause's reputation for integrity and truthfulness even in discovery, his use at trial is objected to on this additional ground.

DATED this 27<sup>th</sup> day of December, 2013.

*/s/ Guy Bogdanovich*

*/s/ Jeffrey A. O. Freimund*

Guy Bogdanovich, WSBA No. 14777  
Attorney for Defendant Sharon Krause  
P.O. Box 11880  
Olympia, WA 98508-1880  
Telephone: (360) 754-3480  
Fax: (360) 357-3511  
email: [gbogdanovich@lldkb.com](mailto:gbogdanovich@lldkb.com)

Jeffrey A. O. Freimund, WSBA No. 17384  
Attorney for Defendant Michael Davidson  
Freimund Jackson Tardif & Benedict Garratt  
711 Capitol Way South, Suite 602  
Olympia, WA 98502  
Telephone: (360) 534-9960  
Fax: (360) 534-9959  
email: [jefff@fjtlaw.com](mailto:jefff@fjtlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the United States of America that on this 27<sup>th</sup> day of December, 2013, I electronically filed Defendants' Objection to Plaintiff's Supplemental Disclosure of Trial Witnesses and the supporting Declaration of Guy Bogdanovich, with the Clerk of the Court using the CM/ECF system, who will send notification of such filing to the following parties:

**Plaintiff Clyde Spencer and Attorneys**

[dhjohnson43@aol.com](mailto:dhjohnson43@aol.com)  
[kathleen.zellner@gmail.com](mailto:kathleen.zellner@gmail.com)  
[dandavies@dwt.com](mailto:dandavies@dwt.com)

DATED this 27<sup>th</sup> day of December, 2013 at Tumwater, Washington.

/s/ Lisa Gates